FOR ARGUMENT

Supreme Court, U. S.
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No. 75-1197

In the Supreme Court of the United States

OCTOBER TERM, 1976

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

HELEN DE CASTRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR THE APPELLANT

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Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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1. The principal burden of appellee's brief is that wives and divorced wives under 62 with dependent children in their care "are * * * accorded different treatment [under Section 202(b) of the Social Security Act] on the basis of their marital status, a criterion that is wholly unrelated and in fact irrelevant to the statutory purpose of providing benefits to wives who care for children" (Br. 9); see also Br. 15-16.[1] Appellee derives the asserted

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[1]We do not understand appellee's argument to be that statutory classifications based on marital status are invalid *per se*. Where marital status is a criterion that bears a rational relationship to legislative purpose, Congress may constitutionally draw classifications on the basis of that criterion. Marital status is often the basis for different treatment of individuals, for example, in federal tax law. *E.g.*, 26 U.S.C. 6013 (providing for the filing of a joint return by a husband and wife), 2056 (providing a marital deduction for estate tax purposes). Moreover, this Court has recently upheld legislative classifications in the Social Security Act that have reference to the marital status of either the beneficiary or the wage-earner. *Weinberger* v. *Salfi*, 422 U.S. 749; *Mathews* v. *Lucas*, No. 75-88, decided June 29, 1976.

purpose of the statute not from legislative history, which she states "is of little value in determining the Congressional goal" (*id.* at 6), but "from the statutory scheme itself * * *" (*ibid.*).

But it is an inappropriate method of constitutional analysis to ascribe a purpose to a statutory scheme that a challenged provision manifestly is not designed to accomplish and then to argue that the provision is unconstitutional because it does not further that purpose. The statutory purpose asserted by appellee—to provide benefits to all wives and divorced wives (of disabled, retired, or deceased wage-earners) who care for their children—is inconsistent with the eligibility provision under consideration here, which expressly denies such benefits to divorced wives such as appellee. Thus the statutory scheme contradicts rather than supports the inference as to legislative purpose that appellee asks this Court to make.[2]

In cases such as this, where the legislative history is silent as to why benefits have not been extended to a category of individuals, the appropriate inquiry must be whether grounds that may reasonably be considered to have been within the contemplation of Congress support the legislative classification. We demonstrated in our opening brief (pp. 13-27) that there are grounds for the statutory scheme, reasonably inferrable from the Act and its legislative history, that support the extension of benefits to wives and certain divorced wives but

[2]Since the statute itself reveals that its purpose was not that of facilitating child care generally, there is no basis for appellee's suggestion (Br. 7) that such a purpose "seems to be confirmed" by the unrelated provision for mother's benefits in Section 202(g) of the Act. Indeed, if Congress had been principally concerned with the problems of child care presumably it would have made the benefits at issue here available under Section 202(g), but it chose not to do so. If anything, this suggests that in drafting the different provisions Congress had distinct purposes and different needs in mind.

do not support a similar extension to younger divorced wives, such as appellee, with entitled children in their care. In such circumstances, even if appellee's analysis were plausible (and we contend that it is not), this Court should, out of deference to Congress, choose the approach favorable to the validity of the statute.

2. Appellee, challenging the meaningfulness of the fact that only 14 per cent of divorced women are awarded alimony, asserts that that statistic "fail[s] to indicate the percentage of divorced women who receive and rely upon child support payments * * *, payments which are inevitably reduced upon the husband's retirement or disability" (Br. 11). But statistics respecting child support payments, which of course are made for the benefit of the child, are not germane here. Section 202(d) of the Act provides child's insurance benefits to the otherwise eligible child of a retired, disabled, or deceased divorced wage-earner. In the instant case, for example, the dependent child in appellee's care is entitled to and is receiving child's insurance benefits under the Act on the basis of her father's primary Social Security account (App. 44-47, 49-50). Since lost child support payments already are replaced under the Act, the percentage of divorced women who receive such payments need not be considered in evaluating the reasonableness of the provision for wife's insurance benefits challenged by appellee.

For the reasons stated here and in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.